

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 244 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAGESHWAR SINGH & ANR.

Versus

OIL & NATURAL GAS COMMISSION & ORS.

Appearance:

MR SR BRAHMBHATT for Petitioners

MR RAJNI H MEHTA for Respondent No. 1 and 2

None present for private respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/01/97

C.A.V. JUDGEMENT

1. This petition is directed by the petitioners against their non promotion to the post of Chemist with effect from 25th/29th February, 1980 and also against the provisional seniority list dated 3rd/24th October, 1983 and 1st September/16th October, 1984.

2. In Oil and Natural Gas Commission the promotions are provided from the post of Assistant Chemist to that

of the post of Chemist. Then further promotion is provided from the post of Chemist to the post of Sr. Chemist and other higher posts to which we are presently not concerned. The respondents no.3 to 11 were promoted to the post of Chemist in the month of August, 1980. The petitioners were promoted on the post of Chemist in the year 1981. The respondents no.3 to 11 were further promoted to the post of Sr. Chemist with effect from 1-1-1984 whereas the petitioners were promoted to this post on 1-1-1985.

3. This Special Civil Application has been filed by the petitioners before this court on 18th March, 1985. The counsel for the respondent-Commission Shri R.H. Mehta made a statement that two further promotions from the post of Sr. Chemist has been given to the petitioners by the respondent during the pendency of this petition. This fact is not disputed by the counsel for the petitioners. The writ petition has been contested by the respondent-Commission by filing a reply to the same. The petitioner has filed rejoinder to the reply.

4. The counsel for the petitioners contended that the promotions which have been given to the respondents no.3 to 11 earlier to the petitioners only on the ground that they were post-graduates is arbitrary and unjustified. The qualifications for promotion as per the regulations of the Commission to the post of Chemist are M.Sc. or B.Sc. (Hons) with three years course, Postgraduate Degree holder with two years experience and B.Sc. degree holders with five years experience, and as such, the petitioners were eligible for promotion, but their cases have not been considered for promotion. He further stated that on the day on which the respondents no.3 to 11 were promoted the petitioners had experience of five years on the post of Assistant Chemist with degree of B.Sc. The preference given on the basis of qualification to the respondents no.3 to 11 is arbitrary. It has next been contended that the earlier promotion given to respondents no.3 to 11 has resulted in the loss of seniority of the petitioners and further consequential loss of promotions.

5. On the other hand, Shri Rajni H. Mehta, the counsel for the respondent-Commission contended that this writ petition deserves to be dismissed only on the ground of delay. The petitioners have been promoted on the post of Chemist and the next higher post of Sr. Chemist and thereafter they have filed this petition. In substance, the grievance of the petitioners is against the promotion given to the respondents no.3 to 11 on the post of

Chemist and now after five years they have challenged those promotions and delay has not been explained. It has next been contended that the petitioners have allowed the respondents no.3 to 11 to take the benefits of their promotion and on the basis of that promotion they have been given further promotion to the post of Sr. Chemist, but the petitioners have not challenged those promotions within appropriate time either before this court or any other court. It has next been contended by Shri Mehta that the respondents no.3 to 11 were given promotion though there were no functional vacancies available. This has been done under office order dated 25th April, 1980 which provides that the stagnation has to be removed and a different eligibility has been provided for the promotion to the higher post. The petitioners were not post graduates and as such for taking the benefit of this office order they have to their credit six years experience for promotion whereas in the case of post graduates, the experience was of four years. On the date on which the respondents no.3 to 11 were promoted to the post of Chemist, the petitioners were not having the experience of six years and as such, they were not given the promotion.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the writ petition, the petitioners have not very specifically mentioned that they have been promoted to the post of Chemist in the month of April, 1981. So far as the promotion of the petitioners to the post of Sr. Chemist is concerned, the petitioners have not mentioned this fact at all though this petition has been filed after the date of promotion. The petitioners have concealed very important fact from this court which was relevant and material fact. The petitioners were promoted to the post of Sr. Chemist from 1-1-1985, but this fact has not been disclosed. Not only this, further the petitioners have not disclosed the subsequent events which have taken place after filing of this Special Civil Application. After filing of this Special Civil Application, the petitioners were given two more promotions to the posts higher than the post of Sr. Chemist. It was the duty of the petitioners to bring on record all the subsequent events which have taken place after filing of this Special Civil Application for which there is no explanation whatsoever given out by the petitioners. However, the counsel for the respondent-Commission has given out these facts during the course of arguments which have not been disputed by the counsel for the petitioner. Though dispute has been raised by the petitioners for the promotion to the post

of Chemist, but by now the petitioners have been promoted to the next higher post, to the post of Sr. Chemist. This conduct of the petitioners of concealing the fact, i.e. one fact of promotion in the writ petition and by not bringing on record the subsequent fact, is to be taken seriously. At one point of time, I consider it to be a fit case where the writ petition should be dismissed on the ground of concealment of facts, but that course has not been adopted.

7. I find sufficient merits in the contention of the counsel for the respondent-Commission that this writ petition suffers from the defect of delay and laches. The respondents were admittedly promoted in the month of August, 1980. The writ petition has been filed by the petitioners on 18th January, 1985. So the promotion of respondents no.3 to 11 has been challenged by the petitioner after about more than 4 years and 6 months. In the writ petition, the petitioners have not given out any explanation why they have chosen to challenge the promotion of respondents no.3 to 11 after such a long delay. During the course of arguments, the counsel for the petitioners has given out that the petitioners were agitating this matter by filing a representation. It is true that the petitioners filed some of representations, but the matter not only pertains to the petitioners but it is a case where by not challenging those promotions of the respondents, the petitioners have allowed the respondents to acquire their right of seniority and future promotions. On the basis of their earlier promotions, the respondents have further been promoted earlier to the petitioners on the post of Sr. Chemist on 1-1-1984. These promotions have also not been challenged by the petitioners in this Special Civil Application. The writ petition has been admitted no doubt, but it was an ex-parte admission and respondents were not the party initially to this petition.

8. The learned counsel for the petitioners contended that after admission of the petition, the court may not dismiss the writ petition on the question of delay. The delay in filing of the writ petition has to be considered from two aspects. One where by delay in filing of the petition no other person is adversely affected, and there is second category of the cases where delay has resulted in acquiring of the right by the persons and if any relief is granted to the petitioner their right acquired is likely to be affected. The respondents no.3 to 11 have been promoted in the month of August, 1980 on the post of Chemist earlier to the petitioners and on the basis of that earlier promotion, they have further been

given the next promotion to the post of Sr. Chemist and two further promotions. So the petitioner by sleeping over their right or their claim in the Special Civil Application, the respondents no.3 to 11 to gain their position of higher seniority in the cadre of Chemist and on the basis of gained position they have further been promoted. In view of this fact, the delay in filing of this Special civil Application is certainly fatal to the claim of the petitioners. The right which has been acquired by the respondents no.3 to 11 because of the slackness of the petitioners or because the petitioners have slept over their right to approach this court for more than four years cannot be allowed to be divested. The petitioners themselves are responsible for the creation of this position and they allowed the respondents to get their rights crystallised. Merely because the provisional seniority list has been published later in time, it will not give any fresh cause of action to the petitioners. Naturally, the provisional seniority list will reflect the position of the petitioners and the respondents with reference to their promotions to the post of Chemist. The respondents no.3 to 11 were promoted earlier to the petitioners on the post of Chemist, and as such, they have rightly been shown senior to the petitioners. The petitioners now want that they may be given promotion on the post of Chemist earlier to respondents no.3 to 11 and in case this plea is allowed then they will become senior to those persons though their promotion which has been made in the month of August, 1980 were not chosen to be challenged by the petitioners at any point of time earlier to 18th January, 1985.

9. One more fact has to be noticed that the respondents have been impleaded as party to this petition on 17th September, 1985. So the writ petition is delayed by more than five years in the matter. It is a case where the petitioners by not challenging those promotions of the respondents before this court or before another appropriate legal forum have acquiesced in those promotions and they have not felt themselves aggrieved of those promotions. Now by claiming the promotion from the back date what indirectly they claim is seniority over these persons. A person who alleges against the Commission of depriving of his right of promotion, cannot get relief by invoking the writ jurisdiction of this court under Article 226 of the Constitution when he is guilty of laches or undue delay. No officer of the Commission is entitled to obtain the equitable relief under Article 226 of the Constitution if his or their conduct is blameworthy because of laches, undue delay,

acquiescence, waiver and the like. Further where the grant of reliefs as claimed by the petitioners against the Commission is bound to result in loss to the acquired right of seniority and promotion of other persons or otherwise it may cause prejudice to other persons whose promotions were never challenged by the petitioners earlier to 1985 before granting such relief, the petitioners are required to satisfy that delay, laches on their part to approach this court for relief under Article 226 of the Constitution was wholly justified in the facts and circumstances. In a case where other persons rights are being created or the petitioners have allowed the right of other persons to ripen, the question of delay and laches cannot be ignored nor any lenient approach can be taken. The petitioners' blameworthy conduct such as laches or undue delay, acquiescence or waiver has to be considered in the light and with reference to those bonafide persons who have been given promotion and their promotion was not at any point of time challenged by the petitioners earlier to five years.

10. Yet there is another reason for which the claim of the petitioners in this Special Civil Application deserves to be rejected. Now the petitioners have been promoted and to acquire seniority on the post of Chemist and further deemed promotions on the basis thereof they have filed this Special Civil Application, but the settled position cannot be allowed to be unsettled merely because after five years, the petitioners have chosen to challenge the promotions of those respondents.

11. Taking into consideration the totality of the facts of this case, this writ petition deserves to be dismissed only on the ground of delay and laches.

12. In the result, the preliminary objection raised by the counsel for the respondent-Commission succeeds and this Special Civil Application is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated.

zgs/-